

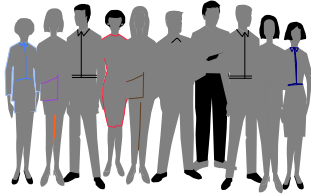


Risky News

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EDITOR: TOM BELL

SUMMER 2001



Annual Risk Management Conference set for October 26

It's time to circle October 26 on your calendar of events, as plans for the annual Risk Management Conference are complete. Brochures containing registration information will be in the mail the week of August 15 and information is also available by calling Risk Management at 303-866-3848.

Suzanne Mencer, executive director of the Department of Public Safety, will lead off the day's presentations with a keynote focusing on Columbine and loss control activities that also relate to state workplaces. Chemical storage and disposal, safety and loss control in lab schools and childcare centers, Racial and sexual harassment case studies, challenges of the aging state workforce and workers' compensation issues are slated for workshops throughout the day.

Carole Matthews, Washington State Risk Management Office, wraps up the day's events with a recapitulation of problems encountered by state employees when the capitol building and other government faculties were severely damaged by the recent severe earthquake. Colorado facilities could face the same problems if a large earthquake or other major disaster were to occur, so it is expected that managers will gain some valuable ideas from this presentation.

Twenty vendors of safety devices or risk management-related services will be on site with displays and flu immunizations are expected to be available, subject to availability of the vaccine.

Advance registration is required! The \$30 fee for state employees may be paid by interagency transfer or warrant, or by personal check, and must be included with the registration form.



SRMAG UPDATE

Members of the Statewide Risk Management Advisory Group (SRMAG) have been busy at their monthly meetings. Several important topics have been discussed.

Eva Reynolds showed a videotape on disposal of hazardous chemicals at Pikes Peak Community College (complete with explosions!) and members got the latest information on hazardous chemicals in state buildings from Chris Eerzinger at the Department of Public Health and Environment.

Kathy Kahn from Pinnacol Assurance discussed return to work (modified duty) programs. Gene Wilcoxon from Department of Human Services gave two presentations at SRMAG meetings, one on their department's modified duty program and the other on their risk management audit program.

Regular monthly features at SRMAG meetings are the legislative update from Tom Bell of State Risk Management, and a workers' compensation case law update from Liz Smith at Pinnacol Assurance.

The group also has vendors demonstrate new safety products and services.

A valuable feature of each SRMAG meeting is a roundtable discussion where members share information on risk management programs that work.

For more information on SRMAG, call Phil Savage of State Risk Management at 303-866-4297



PUBLIC HEALTH & ENVIRONMENT DOES FIRE EXTINGUISHER TRAINING

Safety committee members, fire wardens, and other employees of the Colorado Department of Public Health and Environment recently completed fire extinguisher training. The training was held at the Laboratory and Radiation Services Division building on Lowry Boulevard in Denver.



Denver firefighter demonstrates extinguisher



Putting out the fire

Denver Fire Department firefighters held a short training session on fire extinguishers. Then, the class went outdoors to practice with extinguishers on real fires.

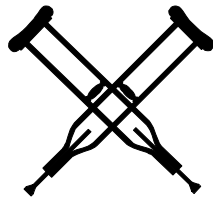


Practice makes perfect



Participants learned that extinguishers usually last only 30 seconds and you must point the nozzle at the base of the fire. They also learned what fires to use extinguishers on, and when to call 9-1-1.

If you're interested in fire extinguisher training, call your local fire department, they may offer it. Fire extinguisher training is informative and fun...and it could save a life.



Getting Employees Back on the Job with Modified Duty

By Kathy Kahn, Return-to-Work Specialist, Pinnacol Assurance

When employers have employees out due to work-related injuries it cost them not only time and money but it also affects the productivity of the workplace. Because these injuries affect profitability and productivity, top priorities for any organization should be to implement an effective safety program to keep injuries to a minimum and to help those injured on the job return to work if an injury does occur. One of the best ways to return an injured worker back to the job as quickly as possible is to have a modified duty program in place prior to an injury.

Modified duty is for employees who have been injured on the job and are collecting workers' compensation wage replacement benefits. Employers are able to offer modified duty to employees as long as a doctor approves the workload. The modified duty can be a full-time or part-time position and at a lower pay rate than the employee had prior to the injury. The modified duty position is temporary until the doctor determines the employee can return to their pre-injury work or has reached maximum medical improvement (MMI).

If you are having trouble finding ideas for modified duty, the following suggestions may help:

1. Identify any special projects the worker could do such as inventory, clean up of work site, clean and wash equipment, running parts or vehicle maintenance. Think about a project that should be done, but there has not been the manpower or the time to do it.
2. Identify activities from the pre-injury position the worker might be able to continue to do.
3. Ask co-workers for tasks that can be delegated. The modified position can be a combination of job duties from several people.

4. Identify potential job site modifications including – a stool for someone who can't stand for long periods of time, raising or lowering work tables, modifying tools, using a cart – anything to allow the worker to do the job while recovering.
5. When defining modified duty tasks, be sure to follow doctor-ordered temporary work restrictions.

A Pinnacol Assurance Return-to-Work Specialist can assist you in developing a modified duty plan. Specific services include:

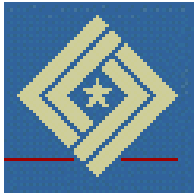
- Ergonomic assessments
- On-site job analysis
- On-site modified duty task analysis
- Educational seminars

The bottom line is that a modified duty program lowers the cost of a claim. By returning the injured employee to work at pre-injury or lesser wages less money is paid out on the claim which can substantially reduce the overall cost. Additionally, early return to work often shortens the length and complexity of the disability and can reduce the potential for legal problems. Finally, the additional costs of hiring and training a replacement worker are avoided. Contact your Pinnacol Assurance representative, Kathy Kahn at (303) 782-4393 or kathy.kahn@pinnacol.com, today to find out more about modified duty programs.



COMPUTER VIRUS ALERT

Two new computer virus is floating around state agencies, "Code Red" and "Sircam". They send virus-laden file attachments to unsuspecting computer users. Don't open file attachments from people you don't know, and make sure your anti-virus program is up-to-date.



OSHA UPDATE

OSHA HAS PUBLIC FORUMS ON ERGONOMICS

Labor Secretary Elaine L. Chao has announced that she would convene three national public forums on the issue of ergonomics safety in the workplace and that she will identify a final course of action on the issue by September.

"We are bringing everyone to the table to get this important issue moving forward and resolved," Chao said. "Defining the best approach for ergonomic injuries is not a simple process and we need everyone's voice heard in the process."

"Guiding principles will provide a vital starting point for evaluating the issue and a point from which we can decide a final course of action."

The forums will be held in Washington DC, Illinois, and California in July, 2001. Members of the public may speak at a forum or submit written comments. An administrative law judge will run the forums, though the secretary and other senior Department officials will participate in portions of the forums.

Congress passed, and on March 20, 2001 the President signed, a Joint Resolution of Disapproval of OSHA's previous ergonomics standard. At that time, Chao said that her intent was to "listen to all sides on this issue: unions, Congress, business and safety and science professionals."

In subsequent testimony before Congress, Chao identified the following set of principles that the Department of Labor will use as a starting point for creating a new ergonomics approach:

Prevention: The approach should place greater emphasis on preventing injuries before they occur.

Sound Science: The approach should be based on the best available science and research.

Incentive Driven: The approach should focus on cooperation between OSHA and employers.

Flexibility: The approach should take account of the varying capabilities and characteristics of different businesses.

Feasibility: Future actions must recognize the costs of compliance to small businesses.

Clarity: Any approach must include short, simple and common sense instructions.

According to the Bureau of Labor Statistics, there were 582,300 musculoskeletal injuries that resulted in employees missing time from work in 1999, the last year for which statistics are available. That was down from 1998 figures, which showed 592,500 such injuries and down from more than 763,000 in 1993.

From an OSHA press release.

OSHA COLLECTING 2000 OCCUPATIONAL INJURY AND ILLNESS DATA

As part of its annual collection of occupational injury and illness data, OSHA has begun distributing calendar year 2000 occupational injury and illness data collection forms (OSHA Form 196) to approximately 80,000 employers nation-wide.

"This annual collection initiative improves OSHA's ability to identify and target our efforts on the more hazardous workplaces," said Acting OSHA Administrator R. Davis Layne. "The more effectively we utilize our resources, the more we can improve workplace safety and health for America's workers."

The 2000 data will allow OSHA to calculate occupational injury and illness rates by specific employer establishments. The information will be used to focus OSHA activities such as inspections, outreach, consultations, technical assistance, and target hazardous work sites under the Site Specific Targeting plan.

OSHA will also use the information to comply with the Government Performance and Results Act (GPRA). Specifically, the Agency is using the data to determine if there is a reduction in injury and illness rates at establishments where OSHA has had an

intervention.

Establishments that receive the OSHA Form 196 in the mail are required to provide average employment, hours worked, and a summary of the occupational injuries and illnesses that occurred in an establishment in 2000.

Employers should complete and return the forms or respond via the Internet within 30 days, even if there are no occupational injuries or illnesses recorded on their 2000 OSHA No. 200. Completed forms can be returned by mail or fax, or via the Internet, using a secure electronic version of the form.

The data collection initiative will include mail and telephone follow-up to ask clarifying questions concerning data submitted, and to attempt to obtain responses from non-responders. Non-respondents may be subject to OSHA enforcement actions.

From an OSHA press release.

OSHA Rule On Record Keeping For Workplace Injuries To Go Into Effect as Scheduled

Secretary of Labor Elaine L. Chao has announced that an Occupational Safety and Health Administration (OSHA) rule on record keeping would largely go into effect as scheduled on January 1, 2002.

"This rule is a big step forward in making workplaces safer for employees, which is our goal," Chao said. "It is written in plain language and simplifies the employer's decision-making process."

The final recordkeeping rule is the culmination of an effort that began in the 1980s to improve how the government tracks occupational injuries and illnesses. The rule increases employee involvement, creates simpler forms and gives employers more flexibility to use computers to meet OSHA regulatory requirements.

The Department will seek comment on two proposed modifications to the rule's record keeping requirements. First, the Department will propose that the criteria for recording work-related hearing loss not be implemented for one year pending further investigation into the level of hearing loss that should be recorded as a "significant" health condition.

The Department had received comments pointing out

that the medical community and State worker compensation systems do not support the current rule's hearing loss standard.

Second, the Department will propose to delay for one year the record keeping rule's definition of "musculoskeletal disorder" (MSD) and the requirement that employers check the MSD column on the OSHA Log. The Department has announced its intention to develop a comprehensive plan to address ergonomic hazards and has scheduled a series on ergonomics. The issues to be decided as a result of these forums include the appropriate definitions of the terms "ergonomic injury" and MSD. Chao said, "Until a definition is agreed upon, the data collected will not help us target the injuries that need to be eliminated."

From an OSHA press release.



NOTES FROM THE ROAD by Tom Bell

Some interesting safety items seen on the road this summer...

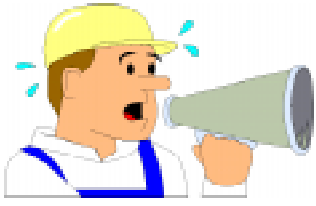
In motels in Indiana and Virginia, "EXIT" letters a foot high in reflective or glow-in-the-dark tape, at the *bottom* of exit doors. The reason? When smoke makes occupants "go to ground" in a fire, they can still see where the exit is while they're crawling in the hall.

On Pennsylvania highways, special signs at construction sites say "Please slow down, my mommy (or daddy) works here". The font on the sign looks like a child's handwriting, complete with a backwards "s". A very powerful reminder to slow down for highway workers.

LATEST WORK COMP LOST TIME DATA

The Bureau of Labor Statistics has released lost time data on 1999 work comp claims, available at:

<http://stats.bls.gov/special.requests/ocwc/oshwc/osh/case/osnr0012.pdf>



OSHA OFFERS TIPS TO PROTECT WORKERS IN HOT SUMMER WEATHER

Working in hot environments can be dangerous. In many industries, such as laundries, foundries, bakeries and construction projects, workers face conditions that make them especially vulnerable to safety and health hazards. Higher summer temperatures increase those risks.

The combination of heat, humidity and physical labor can lead to fatalities. In 1999, 34 workers died and 2,420 others experienced heat-related occupational injuries and illnesses serious enough to miss work.

Simple precautions, such as those listed on OSHA's Heat Stress Card, can prevent many heat-related deaths and injuries. Available in English and Spanish, this laminated fold-up card is free to employers to distribute to their workers. It offers a quick reference about heat-related injuries, including warning signs and prevention tips:

How to Protect Workers

- ✓ Encourage workers to drink plenty of water - about 1 cup of cool water every 15 to 20 minutes, even if they are not thirsty - and to avoid alcohol, coffee, tea, and caffeinated soft drinks that dehydrate the body.
- ✓ Help workers adjust to the heat by assigning a lighter workload and longer rest periods for the first 5 to 7 days of intense heat. This process needs to start all over again when a worker returns from vacation or absence from the job.
- ✓ Encourage workers to wear lightweight, light-colored, loose-fitting clothing. Workers should change their clothes if they get completely saturated.
- ✓ Use general ventilation and spot cooling at points of high heat production. Good airflow increases evaporation and cooling of the skin.
- ✓ Train first-aid workers to recognize and treat the signs of heat stress and be sure all workers know who has been trained to provide aid. Also train supervisors to detect early

signs of heat-related illness and permit workers to interrupt their work if they become extremely uncomfortable.

- ✓ Consider a worker's physical condition when determining fitness to work in hot environments. Obesity, lack of conditioning, pregnancy, and inadequate rest can increase susceptibility to heat stress.
- ✓ Alternate work and rest periods, with rest periods in a cooler area. Shorter, more frequent work-rest cycles are best. Schedule heavy work for cooler times of the day and use appropriate protective clothing.
- ✓ Monitor temperatures, humidity, and workers' responses to heat at least hourly.

For a copy of OSHA's Heat Stress Card in English or Spanish, click on OSHA's website, www.osha.gov, then Newsroom, followed by Publications. Fill out the order form online, and fax your request to Publications at (202) 693-2498. You can also call (202) 698-1888 or write to: U.S. Department of Labor/OSHA, OSHA Publications, P.O. Box 37535 Washington, D.C. 20013-7535.

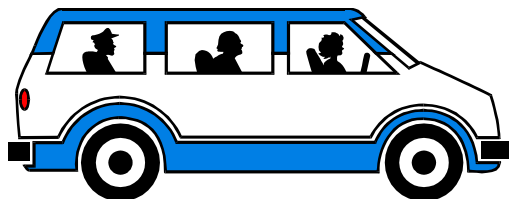
More information about heat and sun hazards can be found on OSHA's website, www.osha.gov and at the Centers for Disease Control and Prevention (CDC) www.cdc.gov and the National Institute for Occupational Safety and Health (NIOSH) www.cdc.gov/niosh

From an OSHA press release.



CONSUMER PRODUCT SAFETY COMMISSION ANNOUNCES FIRE SPRINKLER RECALL

The U.S. Consumer Product Safety Commission (CPSC), and Central Sprinkler Company, an affiliate of Tyco Fire Products LP, of Lansdale, Pa., are announcing a voluntary replacement program. The company will provide free parts and labor to replace 35 million Central fire sprinklers with O-ring seals. The program also includes a limited number of O-ring models sold by Gem Sprinkler Company and Star Sprinkler, Inc. totaling about 167,000 sprinkler heads.



NHTSA VAN WARNING

The National Highway Traffic Safety Administration (NHTSA) is issuing a cautionary warning to users of 15-passenger vans because of an increased rollover risk under certain conditions.

The results of a recent analysis by NHTSA revealed that 15-passenger vans have a rollover risk that is similar to other light trucks and vans when carrying a few passengers. However, the risk of rollover increases dramatically as the number of occupants increases from fewer than five occupants to over ten passengers.

In fact, 15-passenger vans (with 10 or more occupants) had a rollover rate in single vehicle crashes that is nearly three times the rate of those that were lightly loaded.

NHTSA's analysis revealed that loading the 15-passenger van causes the center of gravity to shift rearward and upward increasing the likelihood of rollover. The shift in the center of gravity will also increase the potential for loss of control in panic maneuvers.

Because of these risks, it is important that these vans be operated by experienced drivers. A person transporting 16 or more people for commercial purposes is required to have a Commercial Driver's License, which requires certain specialized knowledge and driving skills. Although the drivers of these vehicles are not required to possess a Commercial Driver's License, they should still understand and be familiar with the handling characteristics of their vans, especially when the van is fully loaded.

NHTSA's analysis reinforces the value of seat belts. Eighty percent of those nationwide who died last year in single vehicle rollovers last year were not buckled up. Wearing seat belts dramatically increases the chances of survival during a rollover crash.

NHTSA urges that institutions using 15-passenger vans require seat belt use at all times.

NHTSA is making this information available because of these findings and because of several highly publicized rollover accidents involving 15-passenger vans loaded with college students (often driven by a fellow student rather than a professional driver).

While federal law prohibits the sale of new 15-passenger vans for the school-related transport of high school age and younger students, no such prohibition exists for vehicles to transport college students or other passengers.

A copy of the NHTSA analysis of the rollover characteristics of 15-passenger vans can be found at: <http://www.nhtsa.dot.gov/people/ncsa/reports.html#2001>.



LIGHTNING SAFETY

The University of Colorado Office of University Risk Management recently held a seminar on Lightning Safety at the UCCS campus in Colorado Springs.

The guest speaker was Richard Kithil of the National Lightning Safety Institute. He gave an informative presentation on lightning and how to avoid it.

There are 22 million lightning flashes a year, and lightning temperatures can reach 50,000 degrees F, of four times hotter than the sun. But, 90% of those struck by lightning survive.

To avoid being struck by lightning, stay away from trees, water, open fields and telephones. Lightning can come into your house through the telephone line.

The best place outdoors to avoid lightning is in a vehicle, which acts as a Faraday cage to protect you. Close all doors and windows and put your hands in your lap so you don't touch anything metal.

If a vehicle is not nearby, get in a crouching position with only your feet touching the ground and your hands on your ears.

For some other lightning safety tips, try: <http://www.high-point.net/dept/fire/em/lightng.htm>

To take a lightning safety quiz, go to this site: <http://www.mos.org/sln/toe/safety.html>



A.D.A. UPDATE

EEOC FILES 16TH ADA SUIT AGAINST WAL-MART

The U.S. Equal Employment Opportunity Commission (EEOC) announces that it has filed suit against Wal-Mart Stores, Inc., under Title I of the Americans with Disabilities Act of 1990 (ADA), accusing the world's largest retailer of failing to reasonably accommodate an employee with a disability at its Peoria, Arizona, store. The suit is EEOC's 16th legal action nationwide against Wal-Mart for violating the employment provisions of the ADA.

EEOC's latest lawsuit alleges that Wal-Mart discriminated against Alice Rehberg by refusing to provide a reasonable accommodation for her disability; Ms. Rehberg is severely limited in her ability to stand for extended periods. According to the suit, Wal-Mart refused Ms. Rehberg's request for permission to occasionally sit down while performing her duties as a People Greeter, failed to engage in the interactive process required by the ADA, and constructively discharged Ms. Rehberg from her position.

The suit, filed in U.S. District Court for the District of Arizona, seeks compensatory and punitive damages, reinstatement, injunctive relief, and a court order requiring Wal-Mart to conduct training that will prevent further violations of the ADA.

"By now, it should be clear that employers may not flagrantly disregard laws prohibiting discrimination in the workplace on the basis of disability," said C. Emanuel Smith, acting regional attorney of EEOC's Phoenix District Office, which filed the suit. "By denying Ms. Rehberg a reasonable accommodation, Wal-Mart limited its focus to her disability instead of her ability and success in the position. Despite representations to the contrary, Wal-Mart has consistently violated the rights of individuals with

disabilities, and EEOC will hold the company accountable for doing so."

Currently, EEOC has 11 ADA suits pending nationwide against the retail giant. Last week, Arizona District Court Judge William D. Browning ordered Wal-Mart to pay sanctions totaling \$750,200 for violating key provisions of a Consent Decree it voluntarily entered into with EEOC and the Arizona Center for Disability Law resolving an ADA suit on behalf of two deaf individuals.

In addition to the monetary sanction, Judge Browning further ordered Wal-Mart to provide training it had previously agreed to provide and to prepare an explanatory television advertisement to air in major media markets in Arizona.

The TV ad will state that Wal-Mart has in the past violated the ADA and refer people who believe they have been discriminated against on the basis of disability to the EEOC or the Arizona Center for Disability Law.

EEOC also has won several jury verdicts against Wal-Mart in disability discrimination suits, including significant 1997 verdicts in Albuquerque, N.M.

In one case, a jury found that Wal-Mart intentionally refused to hire an applicant as a cashier because he used a wheelchair, and awarded him more than \$3.5 million in damages (which was subsequently reduced by the court to comply with the ADA's statutory caps).

In another case, a jury awarded \$157,500 to an applicant due to Wal-Mart's unlawful pre-employment inquiry and refusal to hire him because of his disability, an amputated arm. The verdict included a \$100,000 punitive damage award, the largest ever levied against a company for asking an unlawful medical question under the ADA.

EEOC SETTLES ADA SUIT AGAINST RAILROAD FOR GENETIC BIAS

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that it has settled its first court action challenging the use of workplace genetic testing under the Americans with

Disabilities Act of 1990 (ADA). EEOC had sought a Preliminary Injunction against Burlington Northern Santa Fe Railway (BNSF) to end genetic testing of employees who filed claims for work-related injuries based on carpal tunnel syndrome.

"EEOC sought the preliminary injunction to prevent irreparable harm to employees who faced the impossible choice of potentially losing their jobs or revealing their genetic makeup," said Commission Chairwoman Ida L. Castro. "Our swift action in this case allows Burlington Northern employees subjected to genetic testing to continue to work free of retaliation and future invasions of privacy in violation of the Americans with Disabilities Act."

According to EEOC's Petition, Burlington Northern's genetic testing program was carried out without the knowledge or consent of its employees, and at least one worker was threatened with termination for failing to submit a blood sample for a genetic test. Today's settlement, in which BNSF admits that it tested certain employees for a genetic marker, is in the form of an Agreed Order and includes the following terms:

BNSF shall not directly or indirectly require its employees to submit blood for genetic tests;

BNSF shall not analyze any blood previously obtained;

BNSF shall not evaluate, analyze or consider any gene test analysis previously performed on any of its employees; and

BNSF shall not retaliate or threaten to take any adverse action against any person who opposed the genetic testing or who participated in EEOC's proceedings.

In addition, as part of the settlement, BNSF shall preserve all evidence relevant to its genetic testing until several charges of discrimination filed with EEOC against the company are resolved. In its ongoing investigation of the initial charge filings, EEOC may seek compensatory and punitive damages

up to \$300,000 per individual (the statutory cap) for a class of claimants ranging from 20 to 30 BNSF workers who were either subjected to genetic testing or retaliated against for failing to submit to such tests.

"The Commission will continue to respond aggressively to any evidence that employers are asking for or using genetic tests in a manner that violates the ADA," said EEOC Commissioner Paul Steven Miller, who in July 2000 testified before the U.S. Congress on genetic discrimination.

Miller added: "Employers must understand that basing employment decisions on genetic testing is barred under the ADA's "regarded as" prong, as stated in EEOC's 1995 policy guidance on the definition of the term "disability." Moreover, genetic testing, as conducted in this case, also violates the ADA as an unlawful medical exam."

In its Petition for Preliminary Injunction, the EEOC asked the Court to order the railroad to end its nationwide policy of requiring employees who have submitted claims of work-related carpal tunnel syndrome to provide blood samples, which are then used for a genetic DNA test for Chromosome 17 deletion - which is claimed to cause carpal tunnel syndrome in rare cases.

EEOC also sought to halt any disciplinary action against or termination of any employee who refused to submit a blood sample for genetic testing

EEOC is the federal agency responsible for enforcing Title I of the ADA, which prohibits discrimination against qualified individuals with disabilities, including prohibiting an employer from seeking disability related information not related to an employee's ability to perform his or her job.

In addition, EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, religion, sex or national origin; the Age Discrimination in Employment Act, which protects workers age 40 and older; and the Equal Pay Act which prohibits sex-based differences in compensation.

Further information about EEOC, including its ADA policy guidances, is available on the agency's Web site at www.eeoc.gov.

From EEOC press releases.



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